

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 92-1-CRB

Plaintiff,

**ORDER TRANSFERRING MOTION
TO VACATE TO UNITED STATES
COURT OF APPEALS FOR THE
NINTH CIRCUIT AND
INSTRUCTIONS TO CLERK**

v.

DONELL HATCHER,

Defendant.

Petitioner Donell Hatcher has filed an application for leave to file a second or successive motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255(h). See Mot. (dkt. 2453). However, the two statute he relies on, 28 U.S.C. § 2255(h) and 28 U.S.C. § 2244(b)(3)(A), both contemplate that a court of appeals will determine whether a district court is authorized to consider a second and successive motion. This Court lacks jurisdiction to consider Petitioner's motion unless and until he receives certification from the court of appeals. See United States v. Lopez, 577 F.3d 1053, 1056 (9th Cir. 2009) (finding district court did not have jurisdiction and therefore erred in reaching the merits of a newly discovered Brady claim because petitioner failed to first obtain certification from the Ninth Circuit to file a second or successive petition pursuant to § 2255(h)).

Accordingly, the Court TRANSFERS the application to the United States Court of Appeals for a determination as to whether Petitioner should be permitted to proceed with his

1 latest motion. See, e.g., Cephas v. Nash, 328 F.3d 98, 104 n.5 (2d Cir. 2003); United States
2 v. Nelson, 465 F.3d 1145, 1149 (10th Cir. 2006).

3 The Clerk shall forward Docket No. 2453 to the United States Court of Appeals
4 forthwith.

5 **IT IS SO ORDERED.**

6 Dated: October 13, 2016



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE